



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 01/19/99

AGENDA ITEM 7

WORK SESSION ITEM       

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Authorization of Eminent Domain Procedures for the Shiells Property at the Northeast Corner of Mission Boulevard and "B" Street

**RECOMMENDATION:**

It is recommended that the City Council:

1. Conduct the public hearing,
2. Adopt a resolution of necessity authorizing institution of eminent domain proceedings to acquire the property from the Shiells family, and
3. Transfer \$36,500 from the General Fund to the Capital Improvement Fund for the acquisition.

**BACKGROUND/DISCUSSION:**

The subject property has been vacant for over ten years since a fire destroyed the building that occupied the site. The basement has never been filled and the site has consequently been fenced off to prevent pedestrians from falling. The property is currently overgrown with trees and other vegetation. The Hayward fault underlies the easterly portion of the property.

The subject property is included in an area proposed for the Mission Boulevard Linear Park outlined in "The Core Area Plan," prepared by Solomon, Inc., adopted July 28, 1992, as a component of the Downtown Specific Plan. It is proposed to acquire this parcel at this time in order for a pocket park to be constructed on the property

It is customary for the Rotary Club of Hayward to identify a project for the benefit of the community. The construction of a pocket park at this location has been selected as the Club's project for this year. Staff has been advised that if the property is acquired by the City, the Rotary Club is in a position to assist the City with the improvements. One way the Club proposes to render this assistance is to have its members volunteer their time and effort to

construct the improvements. Finally, the Club has established a goal of completing the pocket park by the end of Spring.

With the cooperation of the Club, and assuming timely possession of the property, staff believes this goal is achievable. Because of the condition of the property, some of the work must be done under contract as it is not suited for volunteers. Nonetheless, this does represent a good opportunity to combine the efforts of a service organization with those of the City to enhance the appearance of the downtown.

With the Council's concurrence, staff will return with specific information concerning the particular elements to be incorporated into the park.

The City has attempted to acquire this property from the Shiells family in the past to no avail. A recent independent appraisal placed a value on the property of \$36,500 which recognized the location of the fault and the need to fill the property. On November 17, 1998, an offer was made to the property owner to purchase the property at the appraised value. No response was received.

The environmental impacts of the Park Project and acquisition are within the scope of the impacts discussed in the Program EIR certified in 1986 and reaffirmed in 1992 in connection with the Downtown Specific Plan. In addition, the property acquisition is also categorically exempt under Sections 15316 and 15325 of the California Environmental Quality Act (CEQA) Guidelines.

In order to allow the Pocket Park Project to proceed, it is necessary for the City to have possession of the site. Commencing the eminent domain process will afford the City the opportunity to secure possession and afford the property owner the right to draw and use the money the City must deposit for the owner's benefit. Of course, City staff will pursue all opportunities to reach settlement with the Shiells family in order to complete the acquisition process without court action.

A two-thirds vote of the City Council is required to approve this action, pursuant to the Code of Civil Procedure. While public testimony is not restricted at the hearing, only the following items are required to be considered by Council:

1. Public interest and necessity requires the proposed project;
2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The real property shown on Exhibit A is necessary for this project;
4. The offer required by the Government Code has been made to the owners of record.

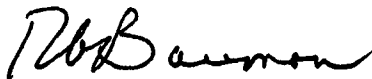
A Notice of Hearing has been sent to the property owner informing them of the hearing date in the manner required by State law.

Since this project has not previously been established in the Capital Improvement Program, it will be necessary to appropriate monies from the General Fund to the Capital Improvement Fund for this purpose.

Prepared by:

  
Robert A. Bauman, Deputy Director of Public Works

Recommended by:

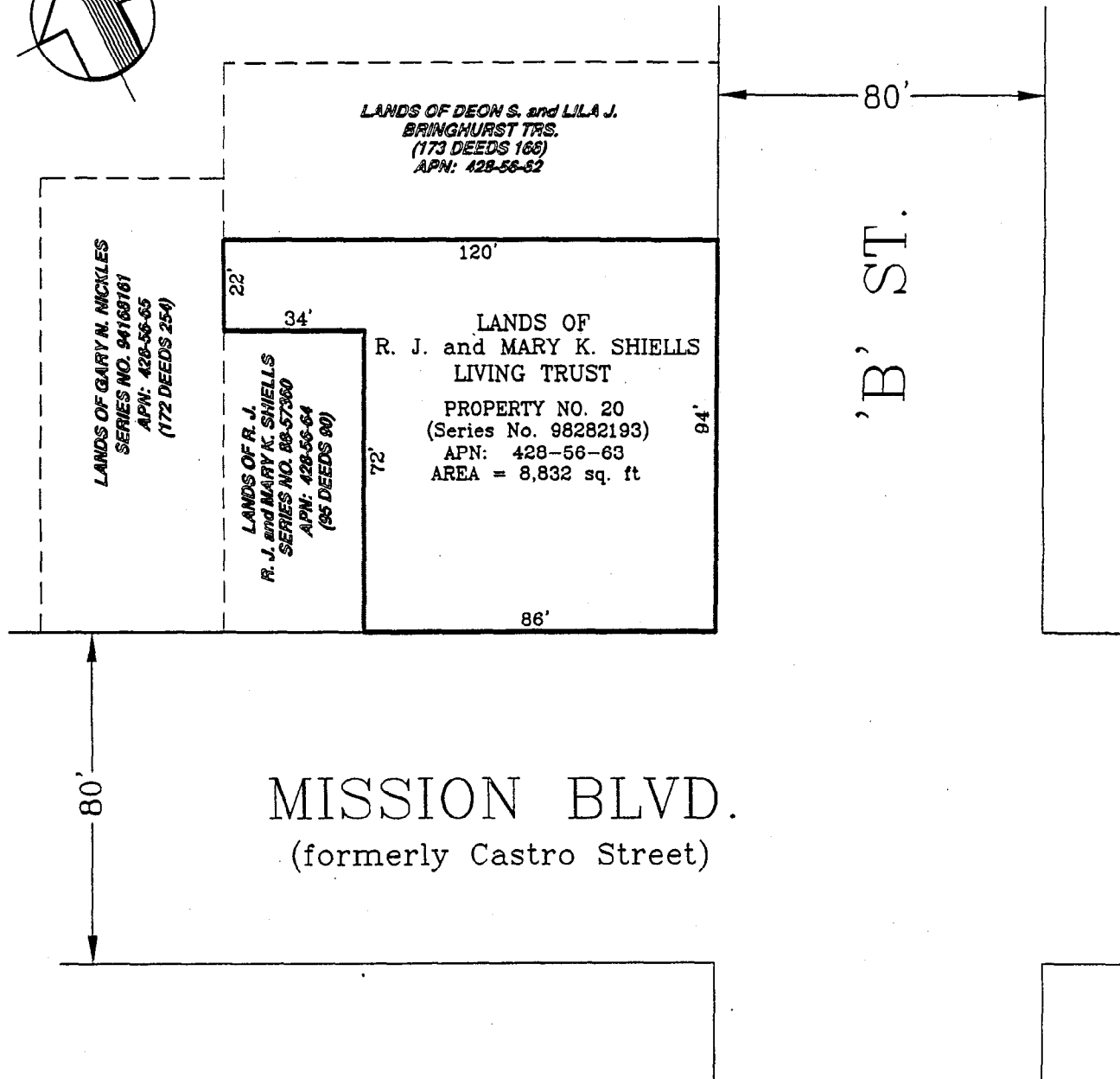
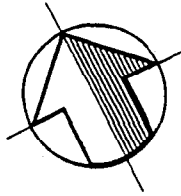
  
Dennis L. Butler, Director of Public Works

Approved by:

  
Jesús Armas, City Manager

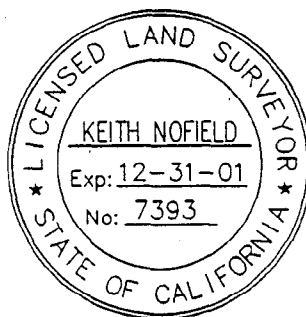
Attachments: Exhibit A – Site Map  
Draft Resolutions

# EXHIBIT "A"



*Keith Nofield*

KEITH NOFIELD  
L.S. 7393  
LICENSE EXPIRES 12/31/01



			CITY OF HAYWARD ENGINEERING DIVISION		POCKET PARK 'B' ST. / MISSION BLVD.		DWG. NO. 99001
			DRAWN BY: KLN	DATE 1/5/99			FILED
			CHECKED BY: JNP	SCALE: 1"=40'			
			APPRO. BY	APPROVED	22549 MISSION BLVD. APN: 428-56-63		SHT. 1 of 1
REV	DATE	BY	CITY ENGINEER		DIR. PUBLIC WORKS		

**DRAFT**

jm 1-4-99

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION FINDING AND DECLARING A PUBLIC  
NEED FOR AND AUTHORIZING THE ACQUISITION AND  
IMMEDIATE POSSESSION BY EMINENT DOMAIN  
PROCEEDINGS OR OTHERWISE OF A PORTION OF  
CERTAIN REAL PROPERTY LOCATED AT 22582 MISSION  
BOULEVARD TO CARRY OUT A PUBLIC PARK PROJECT

WHEREAS, prior to consideration of adoption of this resolution, City staff have negotiated with the Shiells family, the owner of the unimproved property located at the northeast corner of "B" Street and Mission Boulevard bearing the address of 22582 Mission Boulevard, Hayward, California (APN 428-0056-063-00), more particularly described in Exhibit A to this Resolution, regarding City acquisition of a portion of such property for a pocket park; and

WHEREAS, such property has been designated for potential park purposes by the linear park concept described in the Downtown Specific Plan adopted in 1992, and the City Council has previously determined that the environmental impacts of such Specific Plan are within the scope of the environmental impacts analyzed in the Program Environmental Impact Report certified in 1987, and the acquisition of property for park purposes is also categorically exempt from the California Environmental Quality Act (CEQA) pursuant to sections 15316 and 15325 of the State CEQA Guidelines; and

WHEREAS, the City has complied with all of the provisions of section 1245.235 of the Code of Civil Procedure of the State of California, including a January 19, 1999, public hearing on the matters referred to in section 1240.030 of said code; and giving prior notice of such hearing to the owner of the subject property, as required by said section 1245.235, have been duly complied with; and

WHEREAS, the City of Hayward is authorized by the constitution and statutes of the State of California, including, but not limited to, Government Code sections 37350.5 and 37353, to acquire real property by eminent domain and otherwise.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that it hereby finds, determines, and declares as follows:

1. That the public interest, convenience, and necessity require the acquisition by the City of Hayward of the real property described in Exhibit "A" for a park project;
2. That the public interest, convenience, and necessity require that a fee simple estate be taken by the City of Hayward in and to said real property or interests in real property;
3. That said park project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
4. City staff has made an offer required by section 7267.2 of the Government Code of the State of California to the property owner prior to adoption of this resolution of necessity.

BE IT FURTHER RESOLVED by the City Council that the City of Hayward carry out said project and acquire said real property; that the City Attorney is hereby authorized and directed to take any and all actions necessary or convenient on behalf of the City of Hayward to acquire immediate possession of and title to the real property by eminent domain proceedings or otherwise.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 1999

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**DRAFT**

jm 1-14-99

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AMENDING RESOLUTION 98-107, AS  
AMENDED, THE BUDGET RESOLUTION FOR FISCAL  
YEAR 1998-99, RELATING TO A TRANSFER OF  
FUNDS FROM THE GENERAL FUND, FUND 100 TO  
THE CAPITAL IMPROVEMENT FUND, FUND 410 FOR  
THE ACQUISITION OF REAL PROPERTY  
ASSOCIATED WITH THE POCKET PARK LOCATED  
AT "B" STREET AND MISSION BOULEVARD,  
PROJECT NO. 6988

BE IT RESOLVED by the City Council of the City of Hayward that  
Resolution No. 98-107, as amended, the Budget Resolution for fiscal year 1998-99, is  
hereby amended by approving a transfer of \$36,500 from the General Fund, Fund 100 to  
the Capital Improvement Fund, Fund 410, and appropriation to the Pocket Park at "B"  
Street and Mission Boulevard, Project No. 6988, for the acquisition of real property  
located at 22582 Mission Boulevard.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 1999

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward